

REMARKS

Entry of the foregoing, reconsideration of the requirements for restriction and election of species, and examination of all of the claims on the merits are respectfully requested in light of the remarks that follow.

The specification has been updated with regard to applicants' related copending application. Applicants have also corrected a number of obvious errors in Claims 4, 22, 24, 35 and 43. No new matter has been introduced.

In response to the restriction requirement, applicants hereby elect, with traverse, Group I, Claims 1-48, drawn to a cosmetic makeup composition.

Applicants agree that Groups I, II, III and IV are related as product (I, II and IV) and process (II). However, Applicants traverse the rejection because they do not agree that the Examiner has shown that the process as claimed can be practiced with a materially different product. In fact, the features characterizing the elected composition of Group I also characterize the kit of Group IV and the skin, hair etc. of Group III as well as the Group II process; all of these relate to a novel makeup for creating an optical volumizing effect. Furthermore, even if the inventions are distinct, the Examiner should insist on restriction only if searching the related inventions place an undue burden on the Examiner. Such a burden is typically shown by showing that the related inventions necessitate different fields of search. Here, however, the Examiner indicates that each group of claims is classified in the very same class and subclass. Therefore no undue burden has been shown.

For at least the reasons set forth above, reconsideration and withdrawal of the restriction requirement and examination of all of the claims on the merits are believed to be in order and are earnestly solicited.

In the event that the Examiner maintains the restriction requirement, it is applicants' intention to maintain the non-elected claims during prosecution to be commensurate in scope with the elected claims so that they will be ultimately rejoined with allowable composition claims.

In response to the election of species requirement, applicants hereby elect, with traverse, the following four species of Group I:

- (1) As the substrate: glass;
- (2) As a metal or metal compound: Ag (silver);
- (3) As a multilayer interference structure:

$\text{Fe}_2\text{O}_3/\text{SiO}_2/\text{Fe}_2\text{O}_3/\text{SiO}_2/\text{Fe}_2\text{O}_3$; and

- (4) As a makeup composition: lip makeup.

As to the required election of subspecies of substrate, applicants elect, with traverse, glass substrate coated with silver, supported by paragraph **[0082]** of the specification.

Claims 1-48 read on the elected substrate, glass, and on the elected subspecies. Claims 1-48 also read on the elected metal species, Ag (silver), and on the elected multilayer interference structure. At least Claims 1-45 read on the elected lip makeup.

Nevertheless, the election of species requirements are traversed, because election of species normally presupposes that no generic claim is allowable, and no art has been adduced which would militate against the allowance of a generic claim herein.

In view of the foregoing, withdrawal of the restriction and election requirements and examination of all of the claims on the merits are respectfully solicited.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: March 12, 2007

By: Mary Katherine Baumeister
Mary Katherine Baumeister
Registration No. 26254

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620